

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN ANDR'E WARREN,

Petitioner,

Case No. 1:05-cv-791

v

Hon. Wendell A. Miles

ANDREW JACKSON,

Respondent.

_____ /

ORDER ON PETITIONER'S APPEAL OF MAGISTRATE JUDGE'S ORDER

The petitioner in this action is a Michigan prisoner. On June 12, 2006, United States Magistrate Judge Ellen S. Carmody issued an order (docket no. 45) denying a motion by the petitioner requesting that the court take "judicial notice" of what he claims are "adjudicative facts." The matter is currently before the court on petitioner's appeal of that order (docket no. 46).

Discussion

Fed.R.Civ.P. 72(a) provides that where the magistrate judge has entered an order relating to a nondispositive pretrial matter, any party may file timely objections to the order, and the district court then "shall consider such objections and shall modify or set aside any portion of the

magistrate judge's order found to be clearly erroneous or contrary to law." Fed.R.Civ.P. 72(a).¹

In his appeal, petitioner argues that the Magistrate Judge's order denies him the right to submit factual evidence to the court. To the extent that petitioner requests that copies of certain state court documents be made a part of the record in this case, he has not been denied that right. However, what petitioner also wants is for the court to reach certain conclusions based on materials he has submitted. Such a request does not properly fall under Fed.R.Evid. 201. Under the circumstances, the Magistrate Judge did not err in denying petitioner's motion.

The petitioner's objections are **overruled** and the Magistrate Judge's order is **AFFIRMED**.

So ordered this 15th day of August, 2006.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge

¹Federal Rule of Civil Procedure 72 implements certain provisions of the Federal Magistrates Act, 28 U.S.C. § § 631 *et seq.* ("the Act"). The relevant provision of the Act, 28 U.S.C. § 636(b)(1)(A), provides that, with certain exceptions, "a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court," and "may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."